

## REMARKS

Claims 17 and 38-41 are pending in the application. Claims 17 and 38-41 are rejected in this Office Action.

Claim 17 has been amended to include:

44 – 50 % isododecane, support for this amendment can be found in the specification in paragraphs [0043] and [0049];

15 -21 % trimethylsiloxysilicate, support for this amendment can be found in the specification in paragraphs [0034] and [0036];

14 -20 % dimethicone of 500,000 cSt., support for this amendment can be found in the specification in paragraphs [0043] and [0050]; and

Coated with, support for this amendment can be found in the specification in paragraph [0022].

Claims 39 and 40 are canceled without prejudice.

### Rejection Under 35 U.S.C. §112, first paragraph

The Examiner rejects claim 17 under 35 U.S.C. §112, first paragraph as having subject matter which was not described in the specification. The Examiner indicated, "[c]laim 17 now requires "a dimethicone of 500,000 to 640,000 cSt".

Applicants have amended claim 17, without prejudice, to a dimethicone of 500,000 cSt. Support for this amendment can be found in paragraph [0050] of the specification.

Applicants claim is supported in the specification and this rejection should be withdrawn.

#### Rejection Under 35 U.S.C. §112, second paragraph

The Examiner rejects claims 17 and 38-41 under 35 U.S.C. §112, second paragraph as being indefinite.

The Examiner finds, "[c]laim 17 is rendered vague and indefinite because it is not clear whether the claimed invention is a single composition or a set of two separate compositions."

Applicants have amended claim 17 to recite a lip cosmetic comprising an anhydrous pigmented transfer resistant, film forming, cross-linked resinous silicone, composition, comprising by weight of the total composition, 44 – 50% isododecane, 15-21% trimethylsiloxysilicate, 14 – 20% dimethicone of 500,000 cSt, coated with a non reactive wetting agent. Support for this amendment can be found in the specification in paragraph [0022].

Paragraph [0022] describes two compositions, (1) a pigmented transfer resistant film and (2) a non-reactive wetting agent for coating the resistant film. Applicants believe that the amendment reflects the language in paragraph [0022] which clearly describes a two part system and for this reason requests the rejection be withdrawn.

The Examiner finds claims 39 and 40 are "vague and indefinite because claim 17, the base claim, already defines the wetting agent..."

Applicants have canceled claims 39 and 40 without prejudice and ask that this rejection be withdrawn.

#### Rejection Under 35 U.S.C. §103

The Examiner rejects claims 17 and 38-41 under 35 U.S.C. §103(a) as being anticipated by Drechsler et al. (US 6074654) (Drechsler) in view of Manufacturing Chemists ("New uses for old colour materials", June 1, 1999), Exxon Mobile chemical Technical Data and Collin (US 6641821 B1).

The legal conclusion, that a claim is obvious within § 103(a), depends on at least four underlying factual issues: (1) the scope and content of the prior art; (2) differences between the prior art and the claims at issue; (3) the level of ordinary skill in the pertinent art; and (4) evaluation of any relevant secondary considerations. *Id.*, citing *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17, 86 S.Ct. 684, 15 L.Ed.2d 545 (1966).

The Examiner indicated, "[t]he scope of Drechsler discloses a lip color film-forming composition comprising crosslinked organosiloxane resin such as Wacker 803 from Wacker Silicones corp. (trimethylsiloxysilicate) and pigments in a volatile carrier. See col. 7, line 46 – col. 9, line 2" and a method of enhancing the gloss, shine, and feel of lip composition by apply a complimentary product, known as "overcoat" or "topcoat", over the film formed after application of a transfer-resistant lip composition. See col. 10, line 63 – col. 16, line 7."

The Examiner admits, "Drechsler does not specifically teach the wetting agent of the present claims."

The Examiner indicated, " Manufacturing Chemists teaches polyalpha olefins (notably polydecene) are popular oil-free emollients and "pigment wetting and dispersing aids:, known for a recommended replacement for mineral oil." The Examiner adds, "[t]he reference teaches the products under PureSyn trademark from Mobil Chemicals and Ariamol brand by Uniquema are available in different viscosity grades."

The Examiner indicated, "Exxon Mobile Chemical, PureSyn polyalphaolefins are hydrogenated hydrocarbon fluid."

The Examiner indicated, "Collin teaches polyalpha olefin wax has been used in film-forming, transfer-free make up compositions."

The Examiner concludes, "[i]t would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the teachings of Drechsler by substituting the overcoat with polyalpha olefins as motivated by Manufacturing Chemist because the latter teaches polyalpha olefins are popular oil-free emollients and pigment

wetting agent which are also colorless, odorless, non-toxic and non-greasy, and blends well with most cosmetic oils."

Applicants claim, A lip cosmetic comprising an anhydrous pigmented transfer resistant, film forming, cross-linked resinous silicone, composition, comprising by weight of the total composition, 44 – 50% isododecane, 15-21% trimethylsiloxysilicate, 14 – 20% dimethicone of 500,000 cSt, coated with a non reactive wetting agent having affinity to, the composition, said wetting agent being an alpha olefin copolymer, which copolymer is a liquid polymeric hydrocarbon having a number average molecular weight greater than 650 devoid of non-volatile silicone oils, and wherein the wetting agent is nonreactive with transfer resistant, film forming, cross-linked resinous silicone while at the same time capable of interacting with the internal and external surfaces and matrices of the composition by seeping into spaces and surfaces sufficient to wet the composition.

Applicants have filed a Declaration that clearly compare the anhydrous pigmented composition of this application with that of Drechsler. After application to a skin like surface both compositions had an identical non wetting agent applied to the pigmented composition.

As described in Applicant's specification and in the claims the wetting agent is a separate composition applied to the pigmented composition.

The art the Examiner has cited recites use of the polyalpha olefins as emollients in blends. The wetting agent in this composition is not blended with the pigmented composition and therefore does not have the same function cited by the Examiner when referring to Manufacturing Chemist.

The Examiner has cited Colin for the identification of polyolefin wax in a makeup composition. Again the wetting agent in this application is not part of the pigmented composition and therefore can not function the same as the wax in Colin.

A proper obviousness analysis requires that the Examiner must establish a *prima facie* case of unpatentability based on obviousness. In doing so the Examiner should evaluate the

totality of the facts and all the evidence to determine whether the claimed invention would have been obvious. MPEP § 2144.08 (II).

In support of applicant's claim a Declaration of Anjali Patil under 37 CFR 1.132 is attached. In the Declaration applicant shows the differences between the prior art and the claims at issue as well as the level of skill in the pertinent art.

The Declaration compares the following formulations:

Example A – Applicant lip color

Example B – Drechsler lip color

The identical topcoat was applied to both films and the results demonstrate the unique relationship between the base composition and the topcoat.

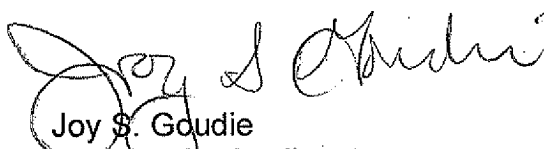
The unique formula disclosed in this application is not the same as the formula disclosed in Drechsler and the topcoat does not react the same with the non-identical compositions.

The references cited by the Examiner do not suggest the formula in this application and do not suggest application of the topcoat as a separate composition from the pigmented composition.

In view of the above amendments and remarks, Applicants respectfully submit that this application is now in condition for allowance and earnestly request such action.

If any points remain at issue which can best be resolved by way of a telephonic or personal interview, the Examiner is kindly requested to contact the undersigned attorney at the telephone number listed below.

Respectfully Submitted,



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